

Oregon's new profiling ban

Individual instances of profiling are difficult to prove, so the state will rely on patterns

BY EMILY GREEN
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A bill prohibiting profiling by law enforcement in Oregon is on its way to becoming law after passing Oregon's house and senate.

It doesn't criminalize profiling, as laws 17 other states do, but it does require all law enforcement agencies statewide to establish policies prohibiting officers from profiling. It also requires each department to set up a system for investigating profiling complaints, which under the bill, can be submitted a number of different ways, including anonymously.

While profiling by law enforcement is now illegal, an individual complaint is unlikely to lead to any disciplinary action on its own. Local attorneys say proving a stop was racially motivated is close to impossible unless the officer says something discriminatory in front of witnesses.

The system for combating profiling under this bill will rely heavily on the accumulation of citizen complaints, which when analyzed together can point to patterns of systematic profiling – but in order for there to be data to analyze, profiling victims have to complain.

In Portland, where profiling is already prohibited, the number of official complaints submitted doesn't reflect the bureau's Stops Data Collection. The 2014 report shows African Americans, Hispanics and Native Americans were disproportionately pulled over for minor equipment violations. The report also showed African Americans and Hispanics were more likely than whites to be searched during traffic stops, but they were far less likely than whites to be found with contraband.

But, according to Derek Reinke, senior management analyst at Portland's Independent Police Review, only 19 complaints alleging "disparate treatment" – his agency's category for profiling – were submitted against Portland police in 2014. It's a number, he says, that is pretty typical.

To date, he says the commission has not reviewed any complaints of disparate treatment that had enough evidence to lead

to serious disciplinary action.

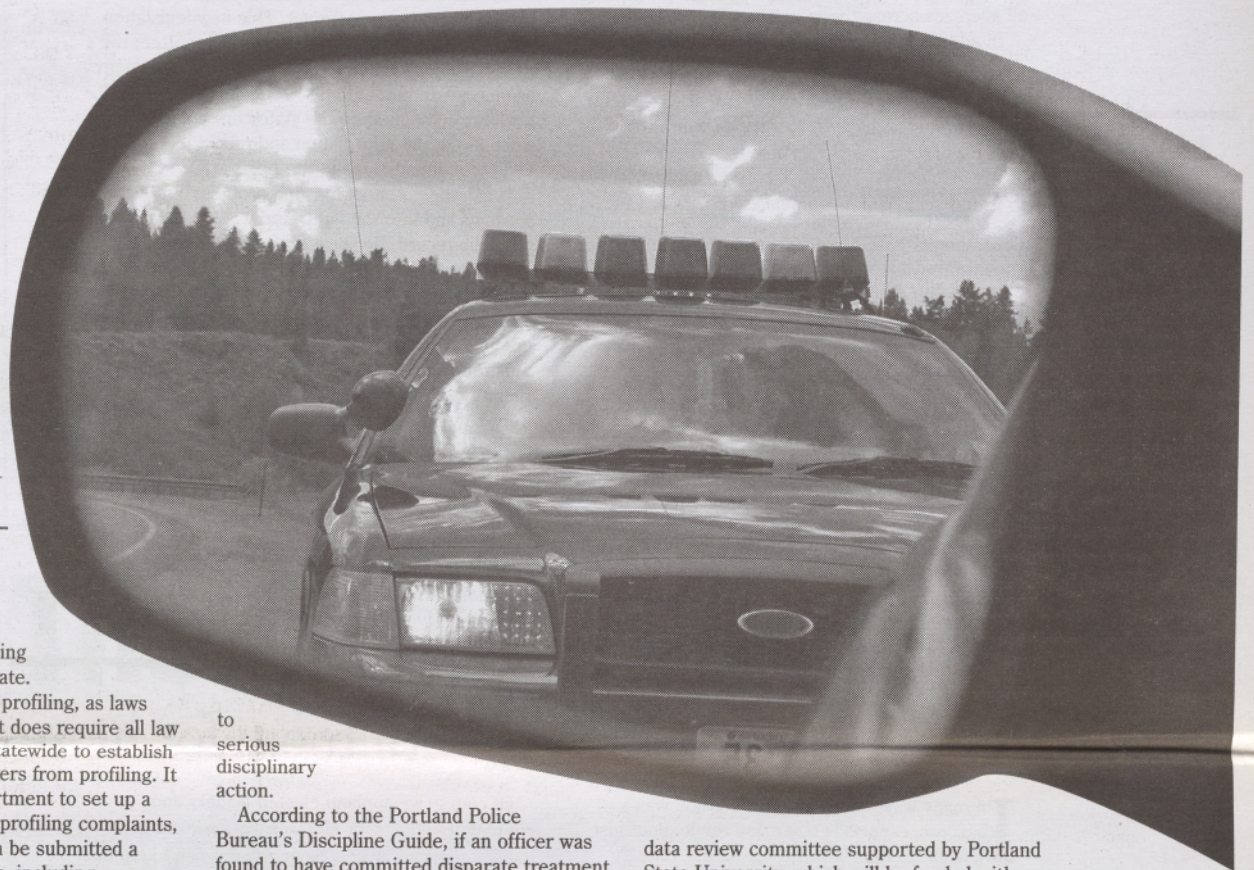
According to the Portland Police Bureau's Discipline Guide, if an officer was found to have committed disparate treatment, the punishment would range from one day suspension without pay to three work weeks suspension without pay, depending on how many prior violations the officer has incurred, and a wide range of other factors including the officer's general performance and whether or not the action led to injury or property damage.

Reinke says that oftentimes when someone submits a complaint alleging profiling, when his agency looks at the police report, it might say the officer stopped them because they fit the description of a suspect.

"There isn't typically much we can do in terms of sustaining and disciplining when it's trying to prove a thought in an officer's head," he explains. "That's pretty tough to do."

The passage of House Bill 2002, Reinke says, will not make it any easier to prove these cases. He says the state law will strengthen PPB's current policy, "but we've certainly had the authority to hold people accountable for that for a long, long time. If it's fairly obvious that the person's out there just pulling over people that meet a certain profile without any other reasons, then we've got a problem," he says. "That kind of a thing could lead to some very serious discipline, but we just haven't seen that kind of a case with that kind of evidence."

The legislation requires law enforcement agencies statewide to adopt policies prohibiting profiling and procedures for accepting and investigating complaints by January 1, 2016. Departments will also be required to send copies of complaints to a



data review committee supported by Portland State University, which will be funded with \$250,000 of general fund money.

The legal definition of profiling under the bill includes bias based on a person's age, race, ethnicity, language, color, religion, national origin, mental disability, political affiliation, sexual orientation, gender or housing status.

According to Kimberly McCullough, the legislative director at Oregon ACLU, the passage of the bill "is a very positive and very powerful step toward addressing profiling."

"The fact that it's going to include all of these categories will be a really good opportunity for educating law enforcement about the fact that profiling isn't just based on race, it happens with all these other things," she says. "Policies and training alone are never enough, but it certainly is part of the equation."

The bill also establishes a work group that will prepare reports and make recommendations to the Legislature based on analysis of complaints alleging profiling. Before the passage of this bill, there was no statewide policy regarding profiling, nor was there a central agency to collect data on profiling.

Center for Intercultural Organizing originally brought the bill to legislature in 2013, and again this session. Inger McDowell, the End Profiling Director for the organization, says many victims of profiling may fail to complain because they don't know how. "The other issue," she says, "is fear of retribution."

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